

**FILED**  
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JUL 12 2006

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court  
Columbia, South Carolina (33)

IN RE: ) C/A No. 04-15255  
Gale Malissa Lyons, ) Chapter 13  
Debtor ) **ORDER DISALLOWING CLAIM**

**ENTERED**

JUL 12 2006

This matter comes before the Court upon Trustee's Objection to Claim and Notice filed on April 24, 2006 and Reply filed thereto on May 22, 2006 by Creekside Place Apartments/Alliance Management ("Creditor").

**KPD**

**FINDINGS OF FACT**

Debtor Gale Malissa Lyons ("Debtor") filed *pro se* a Chapter 13 bankruptcy petition on December 29, 2004.<sup>1</sup> From the record in this case it appears that the debtor did not initially schedule Creditor and there is no evidence that the Creditor was served with a notice of the deadline to file a proof of claim in this case. Creditor asserted a lack of proper and timely notice. The Debtor did not attend the hearing on the objection to claim to provide any evidence to the contrary. The claims bar date for non-governmental claims was set in this case for May 2, 2005. Creditor filed a claim in the amount of \$709.34 on April 14, 2006. The debt involved was for pre-petition rent due to the Creditor. The trustee objected to this claim because it was filed after the claims bar date.

**CONCLUSIONS OF LAW**

According to Federal Rule of Bankruptcy Procedure 3002(c), in an individual Chapter 13 case, "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code." While Rule 3002(c) provides for an extension of the time period in some situations, none are applicable to this case. See Fed. R. Bankr. P. 3002(c)(1)-(5). Moreover, this Court has recognized that while Federal Rule of

<sup>1</sup> Previously Debtor filed a Chapter 7 petition on March 22, 2004 (Case No. 04-3331) and a Chapter 13 petition on June 14, 2004 (Case No. 04-06970).

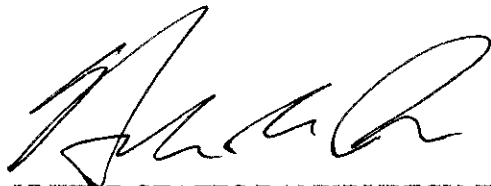
Bankruptcy Procedure 9006(b) gives the court authority to extend certain deadlines in the case of excusable neglect, any enlargement of the deadline in Rule 3002(c) is limited to the conditions stated in that rule, none of which are applicable here. In re Waters, C/A No. 99-05666-W, slip op. at 2 (Bankr. D.S.C. Feb. 3, 2000). The Fourth Circuit has stated “[c]reditors in a Chapter 13 bankruptcy must file a proof of claim within 90 days after the date of the first creditors’ meeting. Bankruptcy Rule 3002(c). Creditors who fail to file their proof of claim within this time period may not receive distributions from the bankrupt estate. A court will not recognize a late proof of claim, even if there was a good reason for the untimely filing”- such as a lack of notice. Hardgrave v. La Rock (In re Hardgrave), 59 F.3d 166, 1995 WL 371462, at\*2 (4<sup>th</sup> Cir. 1995), citing In re Davis, 936 F.2d 771, 773-74 (4<sup>th</sup> Cir. 1991). Accordingly, the Court sustains the trustee’s objection to Creditor’s proof of claim.

As the claim in this case was filed past the bar date it therefore cannot be allowed as a claim to be paid by the Chapter 13 trustee in this case. However, Creditor raised issues of a lack of proper notice at the hearing which the Court notes could potentially render the claim non-dischargeable pursuant to 11 U.S.C. § 523(a)(3)(A). However, the issue of the dischargeability of the claim in question was not raised in any pleading or argument before the Court for consideration at this time, so no ruling will be made on this issue.

IT IS THEREFORE, ORDERED:

That the claim of Alliance Management in the amount of \$709.34 is hereby  
DISALLOWED.

AND IT IS SO ORDERED.



UNITED STATES BANKRUPTCY JUDGE

Spartanburg, South Carolina  
July 12, 2006